

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

DOREEN DEPUISOIR,

Plaintiff, SX-09-CV-023

v.

CARLOS FURNITURE STORE,

Defendant.

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant's Motion for Leave to Propound Excess Interrogatories, filed on January 5, 2011. On January 14, 2011, Plaintiff filed an Opposition to Defendant's Motion. On January 31, 2011, Defendant filed a Reply to Plaintiff's Opposition.

FACTS

On January 16, 2009, Plaintiff filed a Complaint against Defendant. The Parties have since started the discovery process to prepare for trial. On February 26, 2009, Defendant served the First Set of Interrogatories to Plaintiff, where twenty-two (22) interrogatories were propounded. On October 15, 2009, Plaintiff responded to Defendant's First Set of Interrogatories. Defendant pointed out that, despite being asked specifically whether she had been involved in any prior accidents, Plaintiff did not reveal in her October 15, 2009 response that she had been in a previous car accident in 2003 and had suffered injuries.¹ On March 22,

¹ Defendant's First Set of Interrogatories to Plaintiff and Plaintiff's Response:

Interrogatory No. 10. Set forth in detail each and every injury, physical or mental, you have ever sustained, or for which you have ever been under a doctor's care prior to or subsequent to this incident, occurrence or accident which was in any way similar or dissimilar to those alleged in your Complaint.

Response. About two years ago I fell down at church and sprained my right ankle.

Interrogatory No. 13. Set forth in detail any accidents, falls, slips, or assaults, of any kind or nature involving you which occurred prior to or subsequent to the incident, occurrence or accident alleged in your Complaint. Please include in your answer the pertinent dates.

Response. About two years ago I fell down at church and sprained my right ankle.

2010, Plaintiff supplemented her response to Defendant's First Set of Interrogatories to include that she had been involved in a previous car accident in 2003 where she suffered neck and lower back injuries.² On April 29, 2010, Defendant served the Supplemental Interrogatories to Plaintiff, where fourteen (14) interrogatories were propounded. On September 8, 2010, Defendant took Plaintiff's deposition. Defendant alleges that Plaintiff did not reveal any further facts or information regarding her 2003 car accident. However, Plaintiff alleges that Defendant could have but did not ask Plaintiff at the deposition for more information regarding her 2003 car accident. On December 14, 2010, Plaintiff responded to Defendant's Supplemental Interrogatories—Plaintiff answered Interrogatories Nos. 1 and 2 but objected and refused to answer Interrogatories Nos. 3-14 for exceeding the allowable limit of twenty-five (25) interrogatories pursuant to Fed. R. Civ. P. 33(a).³

DISCUSSION

² Defendant's First Set of Interrogatories to Plaintiff, Plaintiff's Response and Plaintiff's Supplemental Response:

Interrogatory No. 10. Set forth in detail each and every injury, physical or mental, you have ever sustained, or for which you have ever been under a doctor's care prior to or subsequent to this incident, occurrence or accident which was in any way similar or dissimilar to those alleged in your Complaint.

Response. About two years ago I fell down at church and sprained my right ankle.

Supplemental Response. I was in a car accident some time in 2003 where I suffered neck and lower back injuries.

Interrogatory No. 13. Set forth in detail any accidents, falls, slips, or assaults, of any kind or nature involving you which occurred prior to or subsequent to the incident, occurrence or accident alleged in your Complaint. Please include in your answer the pertinent dates.

Response. About two years ago I fell down at church and sprained my right ankle.

Supplemental Response. I was in a car accident some time in 2003 where I suffered neck and lower back injuries.

³ In Defendant's Motion for Leave to Propound Excess Interrogatories, Defendant stated that, "Plaintiff objected to and refused to respond to eleven (11) interrogatories as being beyond the allowable limit of interrogatories pursuant to Fed. R. Civ. P. 33(a)(1)." However, an inspection of Plaintiff's Response to Defendant's Supplemental Interrogatories revealed that Plaintiff objected to and refused to respond to twelve (12) interrogatories instead of eleven (11).

Fed. R. Civ. P. 33

Fed. R. Civ. P. (hereinafter, the "Rules") 33(a) provides that a party may not serve in excess of twenty-five (25) interrogatories unless otherwise stipulated or ordered by the court. Rule 33(b)(2) provides that answers and objections to the interrogatories shall be served within thirty (30) days after service of the interrogatories unless otherwise stipulated or ordered by the court. Rules 33(b)(4) states that, "Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." In *Joseph v. General Engineering Co.*, the District Court of the Virgin Islands noted that "[T]he law is well settled that a party's failure to object to interrogatories within thirty (30) days of service thereof is considered a waiver of any objections they might have had." *Citations and footnotes omitted.* 2002 WL 31618810, *1 (D.V.I. 2002). *See also Felix v. American Airlines, Inc.*, 2003 WL 21466922 (D.V.I. 2003) ("It has been the practice of this Court to allow excess interrogatories that were not timely objected to, notwithstanding that it has also been the common practice of this Court to consider particular objections to such interrogatories raised only in opposition to a motion to compel.").

The Court may grant leave to serve additional interrogatories to the extent consistent with Rule 26(b)(2). Rule 26(b)(2)(C) provides that, "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues."

Defendant's Motion for Leave to Propound Excess Interrogatories

Defendant argues that when Plaintiff filed her answers and objections over seven (7) months after being served with Defendant's Supplemental Interrogatories, Plaintiff waived her rights to object to the excess interrogatories. Fed. R. Civ. P. 33(b)(4). *See also Joseph*, 2002 WL 31618810; *see also Felix*, 2003 WL 21466922. Defendant points out that the excess interrogatories do not fall within the categories enumerated in Rule 26(b)(C). Accordingly, Defendant requests the Court to grant its Motion for Leave to Propound Excess Interrogatories.

Plaintiff argues that the Court should deny Defendant's Motion for Leave to Propound Excess Interrogatories. First, Plaintiff argues that the discovery sought is "unreasonably cumulative and duplicative, and was obtainable from some other source that was more convenient, less burdensome and less expensive." Plaintiff believes that the information Defendant is seeking through the Supplemental Interrogatories could have been obtained at the September 8, 2010 deposition with Plaintiff. Additionally, Plaintiff points out that Defendant had already inquired and she had already answered to Defendant's questions regarding Plaintiff's accidents and injuries prior to and/or subsequent to the accident at issue in this matter. Second, Plaintiff argues that Defendant had ample opportunity by discovery to obtain the information sought in the Supplemental Interrogatories, such as the September 8, 2010 deposition with Plaintiff. Furthermore, Plaintiff points out that said information were also discoverable through Defendant's Supplemental Demand for Production of Documents to Plaintiff, and Plaintiff had provided all the information requested. "If in fact Plaintiff was so injured, her medical records which have been produced would so reflect making the propounding of excess interrogatories unnecessary and burdensome." Pl.'s Opposition to Def.'s Mot. for Leave to Propound Excess

Interrogatories, 5. Third, Plaintiff argues that Defendant's goal in propounding the excess interrogatories is to increase Plaintiff's costs and delay the case.

Defendant disagrees with Plaintiff's assertions. Defendant argues that Plaintiff has not been forthcoming with any additional facts or details regarding the 2003 accident. Therefore, the discovery sought is not unreasonably cumulative or duplicative, nor is the information available from another source that is more convenient, less burdensome or less expensive. Defendant also argues that having Plaintiff's medical records does not substitute Plaintiff's responses to the Supplemental Interrogatories. "[T]he succinct and narrow interrogatories Defendant wishes to put forth are the most efficient method of discovering the information necessary to proceed in this case." Def.'s Reply to Pl.'s Opposition to Def.'s Motion for Leave to Propound Excess Interrogatories, 6. Additionally, Defendant argues that the benefit of the proposed discovery outweighs the burden and expense.

The Court will grant Defendant's Motion for Leave to Propound Excess Interrogatories. Plaintiff was served with Defendant's Supplemental Interrogatories on April 29, 2010. Plaintiff waited until December 14, 2010 to respond to Defendant's Supplemental Interrogatories, where Plaintiff included brief answers to Interrogatory Nos. 1 and 2, and objected to Interrogatory Nos. 3-14 for exceeding the allowable limit of interrogatories under Rule 33(a). Plaintiff's answers and objections are untimely under Rule 33(b)(2). It appears that Plaintiff wishes to reap the benefits of the Rules' limitation on interrogatories on one hand while shirking the responsibilities required under the Rules to file timely answers and objections. Pursuant to Rules 33(b)(4), Defendant's untimely response to Defendant's Supplemental Interrogatories constitutes a waiver of her objections. *See Joseph*, 2002 WL 31618810. Moreover, it seems rather disingenuous of Plaintiff to accuse Defendant of delaying the case right now, after she waited for over seven (7)

months to respond to Defendant's Supplemental Interrogatories. Nonetheless, Defendant is not without faults here. Defendant could have obtained the information sought in the Supplemental Interrogatories at the September 8, 2010 deposition with Plaintiff. With both Parties' interest in mind, the Court will grant Defendant's Motion for Leave to Propound Excess Interrogatories but will have Defendant bear the costs and expenses of Plaintiff responding to the Supplemental Interrogatories.

CONCLUSION

The Court will issue an order consistent with this Memorandum Opinion.

DONE and so ORDERED this 10th day of February, 2011.

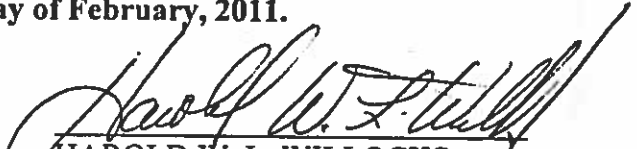
ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 

Deputy Clerk

Dated: 2/10/11


HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY
This 14th day of Feb. 2011
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By  Court Clerk II